

*a***PUBLIC PROSECUTOR****v.****BALDEV SINGH GURCHARAN SINGH**

HIGH COURT MALAYA, ALOR SETAR

b

HISHAMUDIN YUNUS J

[CRIMINAL APPEAL NO: 41-162-95]

31 DECEMBER 1996

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ROAD TRAFFIC: *Driving in excess of prescribed speed limit - Proof - Radar instrument used to detect speed - Whether accurate - Certificate of accuracy - Whether valid - Whether raising any presumption as to accuracy of instrument - Whether purporting to be signed by a qualified person - Road Transport Act 1987 ss. 69(1), 117(10).*

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INTERPRETATION: *Section 117(10) Road Transport Act 1987 - Certificate of accuracy of instrument used to detect speed of vehicles - Whether raising any presumption of accuracy - Purpose of subsection - Whether to simplify task of prosecution - Meaning of "certificate purporting to be signed by any public servant who is an electrical engineer or a mechanical engineer".*

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WORDS & PHRASES: *"Purporting" - "Public servant" - Road Transport Act 1987 s. 117(10).*

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The respondent was charged with an offence under s. 69(1) Road Traffic Act 1987 (the Act), for driving a vehicle at a speed exceeding the 110 km/hour speed limit prescribed thereunder. The facts showed that the excess speed was detected by a certain radar instrument ('the instrument') used by the police. Section 117(10) of the Act stipulates that, "when in any proceeding it is necessary to prove the speed of any vehicle, a certificate purporting to be signed by any public servant who is an electrical engineer or a mechanical

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engineer and certifying any equipment used for determining the speed of vehicles ... to be accurate ... shall be accepted as *prima facie* proof of the facts certified in such certificate ...". At the trial before the learned Magistrate, to prove the excess speed, the prosecution sought to rely on the presumption of accuracy as provided by the above subsection, and in the result tendered a

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document signed by one Ruzlan bin Zabidi of the Jabatan Telekom Malaysia (P5), confirming that the instrument was accurate and in proper working order. P5, however did not indicate that Ruzlan was a public servant, or that he was an electrical or a mechanical engineer. Ruzlan was nonetheless called as a prosecution witness wherefore he testified that he was a 'telecommunication engineer' by profession.

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The learned Magistrate, on the available evidence, ruled that P5 was not a certificate as envisaged by s. 117(10) and so acquitted the respondent without calling for his defence. In this appeal, arguments were raised respecting the true interpretation of s. 117(10) wherein two main issues arose for determination, namely (i) whether P5 is a certificate purporting to be signed by a public servant; (ii) if so, whether the person who signed it purported to be an electrical engineer.

Held:

- [1] The purpose behind the introduction of sub-s. 10 of s. 117 is to simplify the task of the prosecution in prosecuting offenders charged with the offence of speeding in excess of the speed limit.
- [2] By the word ‘purporting’ in the subsection, it is not necessary for the prosecution, at the trial, to adduce evidence to prove that the person who signed the certificate is a public servant, or that he is an electrical engineer, or that he is a mechanical engineer. It is sufficient so long as the certificate tendered, on the face of it, appears or seems to be signed by a public servant who is an electrical engineer or a mechanical engineer as the case may be. The certificate itself is sufficient evidence for the prosecution, for the purpose of proving the accuracy of the equipment, so long as it is purportedly signed by a public servant who is an electrical engineer or a mechanical engineer.
- [3] The words “such public servant shall not be called for cross-examination on the certificate ...” imply that there is no necessity for the person who issued the certificate of accuracy to be called as a witness to tender the certificate. Even if he is called to tender the certificate, he cannot, as a matter of normal procedure, be cross-examined by the defence on the certificate. Thus, procedurally, it would be in order for the certificate to be tendered by the prosecution witness who had operated the radar instrument at the time of the alleged offence or by the person responsible for the maintenance of the equipment at the material time.
- [4] The term ‘public servant’ should be synonymous with the term ‘public officer’. The definition of ‘public officer’ in s. 2 of the Interpretation Acts 1948 and 1967 therefore applies in the present case.
- [5] For a certificate to qualify as a sub-s. 10 certificate, it must contain the necessary information as stipulated by that sub-section. There is nothing in P5 that stated that the person signing it is a public servant. In fact the title of Ruzlan’s office was nowhere stated therein. The facts that P5 carried the letterhead of Jabatan Telekom Malaysia, and that immediately below the name of person signing it is written, ‘bagi pihak Pengarah

- a* Telekom, Jabatan Telekom Malaysia' are not sufficient to call for any inference, or judicial notice, that the person signing it purports to be a public officer. The words "electrical engineer", in any case, do not include an electronic engineer or a telecommunication engineer.
- b* [6] P5, in the result, is a mere letter purportedly sent by the Ketua Pengarah Telekom, Malaysia, but signed on his behalf by Ruzlan bin Zabidi, to the person named in the letter, namely, Komander Unit Peronda 17/18. It is not therefore a certificate as envisaged by the provision of sub-s. 10 and its admissibility should be governed by the normal law of evidence relating to the admissibility of such document.
- c* [7] Material deficiencies in the certificate cannot be rectified by adducing extraneous evidence. The oral evidence of Ruzlan, hence, cannot cure the material omission in P5.
- d* [8] Since the prosecution solely relied on a sub-s. 10 certificate to prove the accuracy of the instrument, but had failed to show that P5, which they relied upon, was such a certificate, it follows that the prosecution, at the trial below, had failed to prove beyond reasonable doubt the accuracy of the instrument that was used. The learned Magistrate was right in not calling for the defence.
- e* [Appeal dismissed]
- Legislation referred to:**
Interpretation Acts 1948 & 1967, s. 2
Road Transport Act 1987, ss. 69(1), 79(2), 117(10)
- f* For the appellant - Azmi Ariffin, Deputy Public Prosecutor
For the respondent - In person

JUDGMENT

g **Hishamudin Yunus J:**

- This is an appeal by the Public Prosecutor against the decision of the Magistrate Court at Gurun. The learned Magistrate acquitted the respondent, at the end of the case for the prosecution, of the charge of driving a vehicle in excess of the prescribed 110 km/hour speed limit, the speed limit prescribed by the Minister of Transport under s. 69(1) of the Road Transport Act 1987 ('the Act'). The charge alleges that at the material time the respondent was driving at the speed of 125 km/hour. The offence is punishable under s. 79(2) of the Act.

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At the trial at the lower Court, the defence challenged the accuracy of the radar equipment used by the police to detect the speed of respondent's car at the time of the commission of the alleged offence. *a*

The main point in issue at the hearing of this appeal is on the interpretation of sub-s. (10) of s. 117 of the Act that reads: *b*

Provisions as to evidence.

117. (1) ...

(10) When in any proceedings it is necessary to prove the speed of any vehicle, a certificate purporting to be signed by any public servant who is an electrical engineer or a mechanical engineer and certifying that any equipment used for determining the speed of vehicles had been examined within the previous eight months and found to be accurate shall be accepted by any Court as *prima facie* proof of the facts certified in such certificate and such public servant shall not be called for cross-examination on the certificate unless for any reason the Court considers the cross-examination to be necessary or desirable in the interest of justice. *c*
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At the trial, at the lower Court, the prosecution, relying on the presumption of accuracy as afforded to the prosecution by the above provision, tendered a document signed by one Encik Ruzlan bin Zabidi attached to the Jabatan Telekom Malaysia (Department of Telecommunications, Malaysia) confirming that the radar instrument used to detect the speed of the respondent's vehicle at the material time was accurate. The certificate states: *e*

Jabatan Telekom Malaysia
Kawasan Utama
Tingkat 1, Bangunan Tuanku Syed Putra
Leboh Downing
10668 Pulau Pinang

Ruj. Tuan: KPN 134/1/12
Ruj. Kami: JTM 14/1608.02(56) *f*
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Tarikh: 20 Jun 1994

(U/P: Ibrahim bin Pawan) K/INSP
Komander Unit Peronda 17/18
Rumah Rehat Plus KM.80.4,
Lebuhraya Utara-Selatan, *h*
08300 Gurun
Kedah Darulaman.

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a Tuan,

Pemeriksaan Alat Perangkap Laju Kenderaan

Berhubung dengan perkara di atas, dimaklumkan bahawa pemeriksaan telah dilakukan pada 20 Jun 1994 ke atas alat yang berikut:

b Alat : MPH Model K 15-11 Doppler Radar

No. Siri : MPD 93864

2. Alat tersebut di atas didapati berada dalam keadaan baik dan boleh digunakan dan adalah tepat sekiranya digunakan dengan betul.

c Sekian, terima kasih.

“Berkhidmat Untuk Negara”

“Cintailah Bahasa Kita”

d [Sign]

(Ruzlan bin Zabidi)

b.p. Ketua Pengarah Telekom.

Jabatan Telekom Malaysia

e The two points of argument that arise between the prosecution and the defence in connection with the interpretation of sub-s. (10) are these:

(a) Is the above document – P5 – a certificate purporting to be signed by a public servant?

f (b) If the answer to the above question is ‘yes’, is the person who signed P5 also purporting to be an electrical engineer?

g Before I proceed to discuss these questions, there are two observations that I wish to make regarding the above sub-s. (10). First, I note that the subsection uses the word “purporting”. In my opinion, by the use of this word, it is the intention of the provision that it is not necessary for the prosecution, at the trial, to adduce evidence to prove that the person who signed the certificate is a public servant, or that he is an electrical engineer, or that he is a mechanical engineer. It is sufficient so long as the certificate tendered, on the face of it, appears or seems to be signed by a public servant who is an electrical engineer (or a mechanical engineer, as the case may be). In other words, the certificate itself is sufficient evidence for the prosecution for the purpose of proving the accuracy of the equipment so long as it is **purportedly** signed by a public servant who is an electrical engineer (or a mechanical engineer).

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The other pertinent point to observe are the words:

... such public servant shall not be called for cross-examination on the certificate unless for any reason the Court considers the cross-examination to be necessary or desirable in the interest of justice.

appearing in the subsection. These words, when read in conjunction with the word “purporting”, I think, imply that there is no necessity for the person who issued the certificate of accuracy to be called as a witness to tender the certificate. And even if he is called to tender the certificate, he cannot, as a matter of normal procedure, be cross-examined by the defence on the certificate. Procedurally, it would, in my opinion, be in order for the certificate to be tendered by the prosecution witness who had operated the radar instrument at the time of the alleged offence or by the person who was responsible for the maintenance of the equipment at the material time. However, it is also to be observed that the provision, in the same breath, confers on the defence the right to apply to the Court that the person purporting to be the public servant be called for the purpose of cross-examination on the certificate; but the Court should grant the application only if it is satisfied that it is necessary or in the interest of justice to do so. Whenever such an application is made, the Court should record the reason for granting or rejecting the application.

It is obvious that the purpose behind the introduction of the provision is to simplify the task of the prosecution in prosecuting offenders charged with the offence of speeding in excess of the speed limit.

Now, having dealt with the above observations, I shall revert to the two issues which I have just mentioned. On the first issue, the pertinent question that needs to be asked first is this: who is a public servant? The Act does not provide for a definition of ‘public servant’. However, s. 2 of the Interpretation Acts 1948 and 1967 (Act 388) has the following definition of ‘public officer’:

‘officer’ and ‘public officer’ mean a person in the permanent or temporary employment of any Government in the Federation, and any person employed or deemed to be employed by the Railway Administration under the provisions of the Railway Ordinance 1948;

It is true that sub-s. (10) speaks of ‘public servant’ and not of ‘officer’ or ‘public officer’, whereas the above is a definition of “public officer”. In my view, however, in our legal system, as a matter of statutory interpretation, the terms ‘public servant’ should be considered as being synonymous with the term ‘public officer’ – unless, of course, the particular legislation in question states otherwise.

- a* Now, bearing this definition in mind, does the person who signed P5 purports to be a public servant (or public officer)? It is to be observed that there is nothing in the certificate stating that he is a public servant or that he is in the employment of the Government. In fact, even the title of his office is not stated in the certificate. It is, however, true that the certificate has a letter head which reads:
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Jabatan Telekom Malaysia
Kawasan Utara
Tingkat 1, Bangunan Tuanku Syed Putra
Leboh Downing
10668 Pulau Pinang

- c* And that immediately below the name of the person signing the certificate is written:

- d* b.p. Ketua Pengarah Telekom.
Jabatan Telekom Malaysia

However, I do not think that these facts alone are sufficient for me to infer, or to take judicial notice of the fact, that the person signing purports to be a public servant.

- e* On the second issue, it is clear that there is also nothing in the certificate which states that he is an electrical engineer or a mechanical engineer.

- f* Now, with these findings, it is my consequential finding that P5 is not a certificate as envisaged by the provision of sub-s. (10). It appears to me that P5 is a mere letter purportedly sent by the Ketua Pengarah Jabatan Telekom, Malaysia, – but signed on his behalf by one Ruzlan bin Zabidi – to the person named in the letter, namely, Komander Unit Peronda 17/18. Its admissibility, therefore, should be governed by the normal law of evidence relating to the admissibility of such document, that is to say, the Evidence Act 1950. Its admissibility should not be governed by the special provision provided by sub-s. (10).
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- h* Since the prosecution was solely relying on a sub-s. (10) certificate to prove the accuracy of the equipment in question but had, however, failed to show that document P5, which they relied upon, was such a certificate, it follows, therefore, that the prosecution, at the trial before the lower Court, had failed to prove beyond reasonable doubt the accuracy of the equipment that was used. The learned Magistrate was, therefore, right in not calling for the defence.

- i* I do, however, take note of the fact, that the person who signed P5, that is, Encik Ruzlan, was called as a witness for the prosecution (as PW4) at the trial before the Magistrate. In giving his personal particulars, he stated that

he was a ‘telecommunication engineer’ (jurutera telekom) employed by the Department of Telecommunication, Malaysia (Jabatan Telekom Malaysia), and in examination-in-chief he said that he was an engineer in the field of electronics (Saya seorang jurutera dalam bidang elektronik). However, with respect, I do not think all these oral evidence could cure the material omissions in P5. In my opinion, in order for a certificate to qualify as a sub-s. (10) certificate the certificate itself must contain the necessary information as stipulated by that subsection (for example, the status of the person signing the certificate). If there are material deficiencies in the certificate, the prosecution could not adduce any extraneous evidence to rectify any such deficiencies. In any case, in the present appeal, the witness (PW4) did not say that he was a public servant (or that he was in the employment of the Government) or that he was an electrical engineer. He merely introduced himself as a telecommunication engineer with the Department of Telecommunication, Malaysia and in examination-in-chief he said that he was an electronic engineer. To my mind, the words ‘electrical engineer’ in the subsection do not include an electronic engineer or a telecommunication engineer.

Reported by W.A. Sharif

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